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Case No. 2:20-cv-00739-JAD-BNW

## ORDER

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,

Defendant.

The parties are familiar with the arguments. As a result, the Court only incorporates them as relevant to the determination of this motion.

### A. Failure to meet and confer

**B. Whether the subpoena violated Rule 45(a)(4)**

Plaintiff's moving papers contend that he did not receive notice of the deposition in

1 question. Defendants' response points to the notice of the deposition (at ECF No. 86-1) to show  
2 that Plaintiff's assertion is incorrect. Plaintiff's reply shifts and argues that he did not receive a  
3 copy of the subpoena.

4 The Court will not consider arguments made for the first time in the reply.<sup>1</sup> *See Zamani*  
5 *v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007).

6 **C. Whether the subpoena allowed for a reasonable time to comply under Rule**  
7 **45(d)(3)(i)**

8 Defendants sent Plaintiff an email on July 26, 2023, informing him of their desire to  
9 depose the witness on August 10, 2023, by way of videoconference. ECF No. 86-3. In addition,  
10 Plaintiff received the notice of deposition on July 28, 2023. ECF No. 86-1. Plaintiff rejected the  
11 notice on July 30, 2023 as untimely. ECF No. 86-5. The witness was served at his home on  
12 August 3, 2023. *See also* ECF No. 86-2.

13 First, Plaintiff appears distressed that Defendants did not afford him the same courtesy  
14 that he argues he has afforded them. That is, Plaintiff argues that (1) there were less than 14 days  
15 between the notice of the depositions and the actual deposition and (2) Defendants unilaterally  
16 chose the date without checking his schedule.

17 While this is certainly not the best practice, the reality is that Plaintiff was first notified of  
18 the deposition on July 26, 2023—which was 15 days prior to the actual deposition date. ECF No.  
19 86-3. Plaintiff waited until July 30, 2023 to reject the notice. Moreover, nowhere does he explain  
20 why there was no reasonable time to comply with the subpoena or offer alternative dates for the  
21 deposition to take place. Indeed, Defendants' efforts to reach out to Plaintiff to meet and confer  
22 on this issue were to no avail. Lastly, there is no record of the witness himself noting that he  
23 would not be able to comply based on the timeline at issue. The Court notes that the documents  
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25 <sup>1</sup> The Court also notes that while there may have been a failure to strictly comply with FED. R.  
26 CIV. P. 45(A)(4), Plaintiff was ultimately able to file his objections. *See Littlefield v. NutriBullet,*  
27 *L.L.C.*, No. CV 16-6894 MWF (SSX), 2018 WL 5264148 (C.D. Cal. Jan. 22, 2018) (adopting a  
less literal approach to the Rule and declining to quash the subpoena where the opposing party  
was able to raise objections and had not been prejudiced by the violation).

1 requested (his file) would not require much time for the witness to produce and that the  
2 deposition was to be virtual—allowing both Plaintiff and the witness to appear remotely. Based  
3 on the totality of the circumstances at play, the subpoena provided a reasonable time to comply.  
4 As a result, the Court will not quash the subpoena on this ground.

5 **D. Whether the subpoena required the witness to appear at a location beyond**  
6 **geographical limits in violation of Rule 45(d)(3)(ii)**

7 According to Rule 45(c)(1)(A), a subpoena may command a person to attend a deposition  
8 only within 100 miles of where the person resides, is employed, or regularly transacts business in  
9 person. FED. R. CIV. P. 45(c)(1)(A).

10 When asked, Plaintiff told Defendants to use the witness's address in Texas for purposes  
11 of serving the *subpoena duces tecum*. ECF No. 86-4. When Defendants learned that the witness  
12 was based in California, they served the witness in California. ECF No. 86-9. Thus, the subpoena  
13 commanded the deposition within 100 miles of the witness's home. Indeed, the subpoena lists  
14 the witness's address as the place where the witness must appear. *Id.* Lastly, the deposition was  
15 to take place by way of videoconference and the notice indicated that the witness could be  
16 present at any physical location. ECF No. 83-1. As Defendants complied with the requirements  
17 of Rule 45(c)(1)(A), the Court will not quash the subpoena on this ground.

18 **E. Whether the subpoena required disclosure of privileged material in violation**  
19 **of Rule 45(d)(3)(iii)**

20 Plaintiff does not provide any substantive argument to explain why the materials in  
21 question are privileged. Indeed, he states he can only “assume” the request is for privileged  
22 information. As a result, the Court will not quash the subpoena on this basis.

23 **F. Whether the subpoena would subject the witness to undue burden in**  
24 **violation of Rule 45(d)(3)(iv)**

25 A party generally has no standing to move to quash or modify a *subpoena duces tecum*  
26 issued to a third person unless the party claims some personal right or privilege regarding the  
27 documents sought. *See Hawaii Regional Council of Carpenters v. Yoshimura*, 2017 WL 738554,  
28

1 at \*2 (D.Haw. Feb. 17, 2017). A party has no standing to move to quash a subpoena on the  
2 ground that it is unduly burdensome when the nonparty has not objected on that basis. *Id.* (citing  
3 *Chevron Corp. v. Donziger*, 2013 WL 4536808, at \*4 (N.D.Cal. Aug. 22, 2013)).

4 Plaintiff does not advance any arguments showing that he has standing to move to quash  
5 on this ground. As a result, this is not a proper basis to quash the subpoena.

6 **G. Relevance of documents sought**

7 Plaintiff argues that the subpoena is not relevant to “whether Defendant can demonstrate  
8 the competency of the expert and the information used in forming the opinion.” But a party’s  
9 objection that the subpoena issued to the nonparty seeks irrelevant information is not grounds on  
10 which a party has standing to move to quash a subpoena issued to a nonparty, especially where  
11 the nonparty, itself, has not objected. *G.K. Las Vegas Ltd. Partnership*, 2007 WL 119148 at \*4.  
12 “A party can, however, move for a protective order in regard to a subpoena issued to a nonparty  
13 if it believes its own interest is jeopardized by discovery sought from a third party and has  
14 standing under Rule 26(c) to seek a protective order regarding subpoenas issued to nonparties  
15 which seek irrelevant information.” FED. R. CIV. P. 26(c)(1); *see also First Am. Title Ins. Co. v.*  
16 *Commerce Assocs., LLC*, 2017 WL 53704, at \*1 (D. Nev. Jan. 3, 2017).

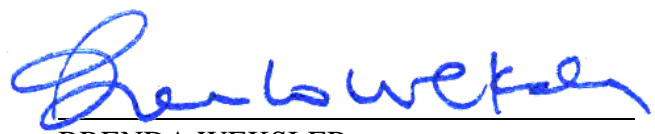
17 **II. CONCLUSION**

18 **IT IS THEREFORE ORDERED** that Plaintiff’s Motion at ECF No. 85 is **DENIED**.

19 **IT IS FURTHER ORDERED** that the parties are to meet and confer within 5 days of  
20 this Order on a mutually agreeable date and time for the deposition of this witness. The  
21 deposition must take place within 30 days of this Order. To the extent Plaintiff has not been  
22 served with a copy of the subpoena, Defendants must do so prior to the meet and confer.

23 **IT IS SO ORDERED.**

24 DATED this 18th day of September 2023.

25 

26 BREND A WEKSLER  
27 UNITED STATES MAGISTRATE JUDGE